(112)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 5791 of 2006

Petitioner/Plaintiff Dharamdas Meghani, S/o- Late Sugnamal Meghani, Aged about 56 years, R/o- Gudhiyari, Raipur, Distt. Raipur, Chhattisgarh.

Versus

Respondents / Defendant No. 2

1) Kamlesh Tiwari, Aged about 46 years, S/o- Late Shri Durga Prasad Tiwari, Director Nexses Buildcom Pvt. Ltd., Sanjay Gandi Chowk, Jaimata Di Complex, Naharpara, Raipur, Chhattisgarh

Defendant No.1

2) Smt. Vidya Bai Meghani, Aged about 58 years, W/o- Shri Jairamdas Meghani, R/o- Alankar Industries, Near Old Targhar, House No. 19/174, Gudhiyari, Raipur, Chhattisgarh.

Defendant No.3

3) State of Chhattisgarh, Through- Collector, Raipur, Chhattisgarh.

Defendant No.4

4) Naib Tehsildar, Mandir Hasoud, Tehsil Office, Raipur, Chhattisgarh.

Defendand No.5

5) Halka Patwari, Patwari Halka No. 67, Ra.Ni.M. Mandir Hasoud, Tehsil- Arang, Distt. Raipur, Chhattisgarh.

Appearance:

Shri Pankaj Shrivastava, counsel for the petitioner.

Shri Ratan Pusti, counsel for respondent No.1.

Shri B.P. Sharma and M.L. Saket, counsel for respondent No.2.

ORAL ORDER
(16.03.2007)

Sunil Kumar Sinha, J.

(1) This is a petition filed under Article 227 of the Constitution of India praying for quashment of the order dated 19.09.2006 passed in misc. civil appeal No. 7/2006 by the Additional District Judge (FTC), Raipur. The aforesaid civil appeal was filed against

the order dated 28.6.2006 passed by the First Civil Judge, Class-II, Raipur in civil suit No. 202 A/2006.

(2) The brief facts are that the plaintiff, petitioner herein filed a suit for declaration of title and permanent injunction in relation to suit land bearing Khasra No. 820 situated in village Umariya, Tehsil & District Raipur (CG). In the aforesaid civil suit, an application for temporary injunction under Order 39 Rule 1 & 2 of the C.P.C. was also filed by the plaintiff praying that defendant No.2 or his agents be retrained from using the aforesaid Khasra number as path way during the pendency of the said civil suit. Learned trial Court, after hearing the parties, allowed the aforesaid application and granted temporary injunction in favour of the plaintiff and restrained defendant No.2 or his agents from using Khasra No.820 as the path way till the final decision of the suit.

(3) Being aggrieved with the aforesaid order passed by the trial Court, defendant No.2 filed a misc. appeal under Order 43 Rule 1(r) of C.P.C. The said appeal was allowed and the learned appellate Court set aside the injunction order granted in favour of the plaintiff. It is against this order, passed by the appellate Court in misc. appeal No. 7/2006, the petitioner/plaintiff has filed this writ petition.

(4) The submission of learned counsel for the petitioner is that the lower appellate Court committed an error of law in holding that there was no prima facie case for granting injunction to the plaintiff and thereby vacating the injunction granted in his favour by the trial Court. He submits that in Para-5 of the impugned order, it has been mentioned that the State authorities, who were

defendants No. 3 to 5 before the trial Court, have also submitted their reply to the extent that Khasra No. 820 was a land of ownership of the plaintiff and in the revenue records it has not been shown as path-way or the road and in the Khasra Panchsala of year 2004-2005, it has been mentioned as *Niji Rasta* in its *Kafiyat* Column. In Revenue Case No.8 A/06/2003, the Tehsildar as well as in Revenue Appeal No. 30 A/06/2004-2005, the S.D.O., both have held that it was not a public way.

(5) Learned counsel for the petitioner submits that on the basis of an alleged agreement between the ancestors of the plaintiff and defendant No.1, it is stated that it was decided between all the family members that the portion of this *Khasra* number shall be used as a private path for them, meaning thereby that it shall not be used as a public path-way, however, challenging this order, a proceeding before the Tehsildar was filed which was decided in favour of the plaintiff and the appeal filed against the aforesaid order was also dismissed by the S.D.O. He submits that after that, a petition in the High Court was filed against the said order by one Mohini Devi Meghani, which is pending for disposal before this Court, in which, the orders passed by the two Courts below have been stayed. His submission is that even if the aforesaid agreement is given respect to, that will only provide a permission to the family members of the petitioner/plaintiff to use the path way as their private path way and it shall not be treated as public path way. Therefore, the trial Court had rightly granted injunction in favour of the petitioner and against defendant No.2 restraining defendant No.2 from using the said land as a public path way

because admittedly defendant No.2 was not a member of the plaintiff's family and he was having no right to use that land on the basis of alleged agreement entered into between the family members of the plaintiff and defendant No. 1.

(6) Admittedly, defendant No.2 is stranger to the family of plaintiff and defendant No.1, and he is claiming his right on the basis of sale-deed which is said to have been executed in his favour which relates to Khasra Nos. 796 & 800. He claims right over the path-way on the basis of a recital in the sale deed and also easementary rights over the said path after purchasing the said property from defendant No.1.

(7) The question of controversy between the parties is as to whether Khasra No. 820 can be treated as a public way or not and whether defendant No.2 shall get a right to use this land as a public path way on the basis of a sale-deed executed by defendant No.1 in his favour and also on the basis of his easementary rights on which the issues are still to be decided by the trial Court.

(8) At this stage, it would not be possible for this Court to express any opinion on this point but *prima facie* an admitted position appears to be coming forward that since the year 1994 Khasra No. 820 was admitted to be the path way for the family members of the plaintiff and defendant No.2 for which they had entered into an agreement.

(9) Be that as it may, in the opinion of this Court, a land which is being used as a private path-way by members of a particular family and which also gives approach to the third person, if used by that person for a very short period which shall be subject to the

final decision of their rights, it shall certainly cause no irreparable loss to the plaintiff and on this point, the lower appellate Court was fully justified to reverse the order passed by the trial Court on the principles of equity. The rights of the parties are still to be decided and if during the pendency of decision on such points, defendant No. 2 is allowed to use that path, ignoring his rights either on the basis of said sale-deed or on the basis of equity, it shall not cause any irreparable loss to the plaintiff.

(10) The lower appellate Court has not committed any error of law warranting interference by this Court under Article 227 of the Constitution of India. The petition has no merits and the same is dismissed.

(11) However, looking to the controversy raised by the parties, it is observed that the trial Court shall try to expedite hearing of the case at the earliest.

Sd/-
Sunil Kumar Sinha
Judge